

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED  
BILLINGS DIV.

2011 AUG 12 AM 11 30

PATRICK E. DUFFY, CLERK

DEPUTY CLERK

UNITED STATES OF AMERICA, )  
 )  
Plaintiff/Respondent, )  
 )  
vs. )  
 )  
MATT FROST, )  
 )  
Defendant/Movant. )  
\_\_\_\_\_ )

Cause No. CR 06-146-BLG-RFC  
CV 11-86-BLG-RFC

ORDER DISMISSING MOTION AND  
DENYING CERTIFICATE OF  
APPEALABILITY

On August 11, 2011, Defendant/Movant Matt Frost filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Frost is a federal prisoner proceeding pro se.

The motion is Frost's second under § 2255. *See* Mot. § 2255 (doc. 70). His first motion, along with a certificate of appealability, was denied on August 4, 2010. Order (doc. 74). Frost did not appeal.

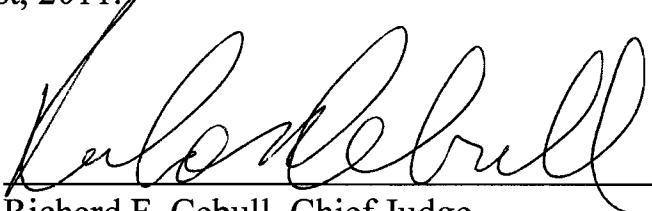
This Court lacks jurisdiction to consider a second motion. 28 U.S.C. § 2255(h); *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). Because

dismissal is imperative, a certificate of appealability is not warranted. Because Frost's motion is frivolous and untimely, transfer to the Court of Appeals is not in the interest of justice. 28 U.S.C. §§ 1631, 2255(f).

Accordingly, IT IS HEREBY ORDERED as follows:

1. Frost's second § 2255 motion (doc. 75) is DISMISSED for lack of jurisdiction.
2. A certificate of appealability is DENIED.
3. The Clerk of Court is directed to enter, by separate document, a judgment of dismissal in the civil case.

DATED this 12<sup>th</sup> day of August, 2011.



Richard F. Cebull, Chief Judge  
United States District Court